



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

**THE SUPREME COURT OF THE UNITED STATES.\***

---

To respond to a toast has always seemed to me submitting oneself to a roast because of the discomfort by anticipation, the misery in performance and the dissatisfaction on account of the things unsaid since only afterwards thought of. In addition, I have refrained since becoming Chief Justice from accepting invitations to make after-dinner speeches because of a tradition that that official was never to be expected to reply to an after-dinner toast. The warmth of the request of the committee in this instance compelled me to consider the reason of the tradition, and I have become convinced that it is not far to seek, since, putting aside the impossible suggestion that there was danger in the Chief Justice agreeing to make a speech after dinner, it is apparent that the rule rests alone upon the assumption that if he said something, he might do that which he was not expected to do, and if he said nothing, he might fail to do that which ought to have been done.

But be this as it may, after overcoming the personal disinclination because of a feeling that to accept the invitation would afford an opportunity to avail of that so infrequently relied upon constitutional provision, the equal protection of the laws, by turning the tables on my brethren of the profession and compelling them to be listeners, no difficulty was experienced in departing in this instance from the tradition, since in no possible view could it have application to the Chief Justice speaking in his own household and to members of his own family. And where, I submit, could he be more at home than at the hospitable board of the American Bar Association surrounded by its members, his professional brethren?

The toast is "The Supreme Court of the United States," but the eloquent words which have just been spoken by my brother Carson demonstrate that the thought underlying its proposal is not the general jurisdiction of the great tribunal which the toast names, but rather the power conferred upon that court to interpret and uphold the constitution and to declare all acts which transcend its limitations to be void, thus sustaining the

---

\*Response of the Late Chief Justice White to Toast at the Annual Banquet of the American Bar Association at Washington, Oct. 22, 1914.

lawful authority of the nation, protecting the legitimate powers of the States and securing to all the people the enjoyment of their constitutional safeguards. But these dominant considerations concern not only the Supreme Court of the United States, but every court, national or State, since such power rests in every court in the land because it inheres in all judicial authority under our system of government. Availing myself then, of the judicial duty of coming to consider that which is essential, I paraphrase the toast as one to the courts of the United States, both State and federal, whether of high or low degree, whether of extended or limited jurisdiction, all to be considered in the light of the authority which they possess and the duty which rests upon them of applying and enforcing the Constitution as the supreme law of the land against all infractions from whatever source proceeding.

Thus fixing the subject for consideration, the first thought that comes to my mind is, in view of the vastness of this power, how completely its creation or recognition and the provisions for the mode of its exercise expressed the faith of the fathers in free government and the power of a free people to perpetuate the same. I say this because the very conception of the power in and of itself was a supreme manifestation of the profound faith which was in them and because the mode provided for the exertion of the power from its simplicity accentuated and made more self-evident the abiding faith by which they were controlled. Thus, while as to practically every other power created, checks and balances of various kinds were resorted to to limit the mode of the exercise of the power or to give sanction to it when exerted, as to the power to interpret and enforce the Constitution conferred upon, or recognized as existing in, judicial authority, no checks were interposed and no sanction whatever was ordained concerning its exertion, the power great as it was, therefore, in its ultimate conception being made to rest solely upon the approval of a free people.

My second thought, as I comprehensively contemplate the mode in which the judicial power has been exerted from the beginning by the courts, both national and State, of all degrees of jurisdiction, is one of marvel at the devotion, the fidelity, the self-restraint and the love of country with which the power has been

exerted; how rare the abuse, how infrequent the slightest semblance of ground for the belief that wilful wrong was committed, that is, that there was an intentional transgression of authority. What a tribute this is to our profession—for judges and lawyers are one. Indeed, as I look at the subject, and contemplate the varied methods by which judges have been selected, the frequent shortness of their tenure, the almost usual inadequacy of their compensation, the natural exultation and pride in our profession which comes to me is tempered by a sense of reverent restraint, since the thought cannot be resisted that a result so remarkable has been brought about by the dispensation of a Merciful Providence in vouchsafing the fulfillment of the promise, "as thy days, so shall thy strength be."

The third thought is how marvelously the existence of these United States as they stand today a mighty people, with a national government adequate to fulfill its purposes, with State governments sufficient to preserve local autonomy, and with its millions of people all free and yet all restrained by those limitations which make men free, is due to the wisdom of the fathers in lodging the ultimate protection of the Constitution in judicial authority, and thus saving the confusion and conflict from which the destruction of our institutions would otherwise have arisen. I know not better how to make this truth obvious than by asking you to picture what would be our condition today if from the beginning we had been deprived of the balance wheel which judicial interpretation has afforded to the maintenance and development of our institutions. I know it may be suggested that this view is a mistaken one since it attributes to the exercise of judicial power beneficial results which were naturally brought about by the operation of economic and other forces; a view which, it is insisted, is demonstrated by the outbreak of the mighty conflict of the Civil War. I might well leave the contention to answer itself by the obvious disproportion between cause and effect which it embodies for who, may I ask, would venture to suggest that because a meteor fell across the sky therefore the great laws by which the harmony and movement of the universe are maintained had no existence and produce no effect? I pause, nevertheless, for a moment to point out the misconception of the suggestion. I take it it may not be at this day doubted that the un-

derlying controversies which brought about the Civil War existed prior to the Constitution as the result of divergent institutions or conditions and conflicting opinions which were not adjusted or harmonized when that instrument was adopted and therefore were left open for subsequent adjustment, and which, by the operation of the laws of self-interest or of conflicting conceptions of duty or even as the consequence of human passion, it became impossible to settle, and which therefore were fanned into the flames which caused that great conflagration. But neither side to that mighty controversy struggled to destroy constitutional government as they understood, but both on the contrary sought to perpetuate and preserve it as it was given them to believe that it should rightfully exist. Underlying the whole struggle, therefore, on both sides, when it is dispassionately looked at, was the purpose to protect and defend free and constitutional government as it was deemed our fathers gave it. And this affords a ready explanation of how when the smoke of battle had passed away and the storm had subsided, the supremacy of our constitutional system by natural operation resumed its sway, and peace and brotherhood reigned where warfare and enmity had hitherto prevailed.

Let me illustrate. Do you recall the toymaker and his blind daughter, created by the genius of Dickens and so admirably interpreted by that great artist, Joseph Jefferson, in "Cricket on the Hearth," where with a tenderness which may not be described, mistaken though it may have been, in order to conceal the poverty and misery of his surroundings the father pictured to the blind one whom he so much loved his environment as one of prosperity and affluence? Let us listen to her as she places her hand upon his threadbare gray coat, which she deemed from his description to be one of some rich fabric, and hear her question, "what color is it, father?" "What color, my child? Oh, blue—yes—yes, invisible blue." And now with the mists of the conflict of the Civil War cleared from my vision, as my eyes fall with tender reverence upon that thin gray line, lo, the invisible has become the visible, and the blue and the gray, thank God, are one. See it again illustrated in that flag which stands behind me. I can recollect the day when to me it was but the emblem of darkness, of misery, of suffering, of despair and despotism. But ah! in the

clarified vision in which it is now given me to see it, as I look upon its azure field it is glorious not only with the north star's steady light, but is replendent with the luster of the southern cross; and as I contemplate its stripes, they serve to mark the broad way for the advance of a mighty people blessed with that plenitude of liberty tempered with justice and self-restraint essential to the protection of the rights of all. And thus again I see, although the stars and bars have faded away forever, the fundamental aspirations which they symbolized find their imperishable existence in the stars and stripes.

Great as is the pride which the considerations just stated afford us as members of our profession, it surely will be the pride which goeth before a fall if our free government should suffer detriment because of our failure to remember and earnestly devote ourselves to the duty which rests upon us concerning it. It is indeed a great duty when the consequences which may result from a failure to perform it are considered, consequences which will be fruitful in misery not only for our own countrymen but to mankind generally; for who can foretell the obscuring of the light of liberty throughout the world which would necessarily result from a failure of our constitutional system? Mark you, I am not speaking pessimistically and am not intimating, because now and again some doctrines are boldly asserted and seem to meet with approval which by their mere statement are so destructive of representative government as to give rise to a sense of despair or at least to cause the foreboding that they foreshadow the possibility of complete extinction of our government by the disregard of the essential truths upon which it must rest, that I am of the opinion that such a result will be accomplished. I say this because the things I refer to, all of them, I think, are but local and ephemeral and they serve to demonstrate one of the wonderful advantages of our system of local government, since it affords a means for confining and localizing the maladies which disappear long before there is the slightest danger of their becoming operative and effective within the great body of the people. Indeed, I cannot conceive the thought that whatever betide and however general might become a popular aberration, the consequence would be that the light of constitutional liberty would go out forever, since there is given me the faith to believe that

however complete might be a conflagration which destroyed the noble edifice of our constitution, as long as the traditions of the American lawyer survived they would suffice to afford the energy and insight from the exertion of which a new and enduring edifice of liberty and representative government would arise. But think of the sorrow and the suffering to be endured while such process of rehabilitation was being carried out.

But the question naturally comes, what are the dangers which threaten us and how is the duty to be performed of guarding against them?

In the first place, there is great danger, it seems to me, to arise from the constant habit which prevails where anything is opposed or objected to, of resorting without rhyme or reason to the Constitution as a means of preventing its accomplishment, thus creating the general impression that the Constitution is but a barrier to progress instead of being the broad highway through which alone true progress may be enjoyed. Upon whom does the duty more clearly rest to modify and correct this evil than upon the members of our profession?

In the second place it seems to me one of the greatest evils which threaten us is, as it were, a forgetfulness of our system, a growing tendency to suppose that every wrong which exists despite the system and which would be many times worse if the system did not exist is attributable to it and therefore that the Constitution should be disregarded or overthrown. This rests alone upon a forgetfulness of the considerations which underlie the Constitution and of the immortal truths which they embody. Why, I recollect but a few years ago meeting a distinguished public man who had just been delivering in one of our great universities a series of lectures on our constitutional system of government. He said to me: "I was surprised to have one of my listeners, a student far advanced in his university life, say, 'it gave me so much pleasure to hear your lectures, for they were the first kindly words I have heard said about our government since the commencement of my university career.'" I recollect myself a few years ago being in the atmosphere of a university and feeling that there existed among the student body either a profound apathy or a great misapprehension as to our government, the division of powers which it created and the limitations

which it embraced; and in mentioning this impression to one quite familiar with the environment I was surprised to hear him say: "Oh, yes, you are quite right, that is the impression which here prevails. Indeed, I think it comes from the state of mind of the teaching body." Doubtless in a large measure this state of mind has imperceptibly and gradually grown from the evil habit which I just a while ago referred to of invoking the Constitution in such a way as to create the profound impression that its restraints were but limitations on true development and were therefore the means of preventing the onward and upward march of our race. Who can better gradually rectify this condition of mind than the members of our profession if only they determine with increased devotion to give themselves up to the correction of errors and wrongs which may exist despite the principles involved in our constitutional government and thus convince that true progress lies in fructifying and making them operative and not by destroying them?

In the third place, it seems to me that there is a tendency, not so great now as it was a few years ago, as admirably illustrated by efficient work in some respects done by the American Bar Association, to be lukewarm concerning attacks upon fundamental and essential Constitutional provisions, to take it for granted that they may not be overthrown, when on the contrary the plain duty is to be alert, to be insistent, to be devoted, at all times and on all occasions to defend against the least encroachment, to point out the dangers which must come and thus to keep ever vividly present and quickened in the minds of all the people the necessity of adhering to and upholding the Constitution if they would preserve the heritage of liberty which they have received.

At the outset, seeking to express the true resonance of the toast to which I was called upon to respond, I ventured to modify its form of statement so as to make it all-embracing and thus virtually cause it to be but the expression naturally to be expected from this body of lawyers. Now as I come to a conclusion may I be permitted to strike a chord for the purpose of evoking the noble harmony which underlies the toast as I at the outset interpreted it, by proposing one to the health of the American lawyer, which includes the American judge, as bench and bar are one;



not alone of the judges of courts of extended jurisdiction and of last resort, but of all, however limited their jurisdiction; not alone of lawyers engaged in great affairs, but of all, however narrow may be the sphere in which they move. And in thus re-expressing the toast or rather echoing it as expressed, may I not be permitted to indulge in the heartfelt aspiration that there may be given to them all a deep and reverent purpose of faithfully discharging the duties which rest upon them, to the end that our free institutions may be preserved and may be transmitted unimpaired to those who are to come.